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In re Application of	:	
TAKAHSHI, Kojiro et al.	:	
Application No.: 10/030,619	:	
PCT No.: PCT/JP00/03000	:	DECISION ON
Int. Filing Date: 10 May 2000	:	
Priority Date: 10 May 1999	:	PETITION
Attorney Docket No.: Takahashi30	:	
For: METHODS FOR CONSTRUCTING	:	UNDER 37 CFR 1.137(a)
DNA LIBRARY AND SUPPORT	:	
CARRYING DNA LIBRARY	:	
IMMOBILIZED THEREON	:	

This decision is in response to "Petition to Revive Under 37 C.F.R. §1.137(a)," filed on 11 January 2002.

BACKGROUND

On 10 May 2000, applicants filed international application PCT/JP00/03000. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 16 November 2000.

On 08 December 2000, applicants filed a Demand for international preliminary examination, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty month period for paying the basic national fee in the United States expired on 13 November 2001 (10 November 2001 was a Saturday and 12 November 2001 was a holiday).

On 11 January 2002, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee and a petition to revive under 37 CFR 1.137(a).

DISCUSSION

A petition to revive an application for patent unavoidably abandoned under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, (2) the petition fee, (3) a satisfactory showing that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition to 1.137(a) was unavoidable and (4) a terminal disclaimer if application was filed before June 8, 1995.

Items (1), (2) and (4) have been met. Applicants have submitted the basic national fee and petition fee. A terminal disclaimer is not required as the application was filed on or after 08 June 1995.

Item (3) has not been met. Applicants must demonstrate that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition to 1.137(a) was unavoidable. The reply was due on 13 November 2001. Applicants did not file until 11 January 2002.

In determining whether a delay was "unavoidable", the "reasonably prudent person" standard is used. See, e.g., MPEP 711.03(c), which states, in pertinent part:

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

The word unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present. [citing to In re Mattullath, 38 App. D.C. 497, 514-15 (1912); emphasis added]

See also *Krahn v. Comm'r*, 15 USPQ2d 1823 (E.D. Va 1990)(holding that a "prudent and careful man" in conducting "his most important business," would have utilized the certificate of mailing procedure under 37 CFR 1.8 when mailing correspondence to the USPTO.)

The facts set forth in the petition do not support a finding that the delay in filing the required reply was unavoidable. In other words, applicants have not demonstrated that in the present case, they exercised the degree of care that a "reasonably prudent person" would exercise in conducting his/her "most important business."

The instant application went abandoned on 14 November 2001 for failure to pay the basic national fee prior to such date. 37 CFR 1.495(b). The materials which applicants mailed to U.S. counsel on 19 October 2001 were not required to be filed in the USPTO by 10 November 2001 to avoid abandonment. Thus, applicants could have instructed U.S. counsel via telephone or return facsimile to pay the basic national fee by such date.¹ A "prudent and careful man" in conducting his/her "most important business," when faced with an impending deadline which, if missed, would result in abandonment of the application, would not have relied solely upon international mail service to inform counsel to timely pay the basic national fee. This is particularly so in the present case, where, by late October 2001, the disruption in the USPS mail service from anthrax contamination was well known. Moreover, as applicants' letter to U.S. counsel requested confirmation by facsimile of receipt of the instruction letter, the failure to receive such

¹ It is clear from Mr. Yamane's letter that applicant was capable of receiving facsimile communications from U.S. counsel.

facsimile confirmation prior to the 13 November 2001 deadline should have alerted applicants that such correspondence had not reached U.S. counsel and that further action to prevent abandonment was warranted, e.g., a telephone call to U.S. counsel.

CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.137(a) is **DISMISSED** without prejudice

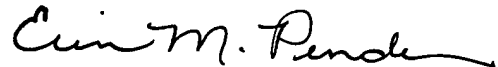
The application remains **ABANDONED**.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(a)." No additional petition fee is required.

Please direct any further correspondence with respect to this matter to the Commissioner of Patents and Trademarks, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the Office of PCT Legal Administration.



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